

## **REMARKS**

The Office Action mailed October 17, 2007, issued a restriction on the claims, alleging claims 1-135 are directed to five distinct inventions. In response, Applicants hereby provisionally elect Group I (claims 1-6 and 13-83) for continued prosecution in this application, with traverse, in view of the following comments.

Applicants note that MPEP § 803 requires that no such election or restriction be required, when the application can be searched and examined without undue burden on the Examiner. In the present case, Groups I and IV, although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, the correlated parameters of Group I may be obtained using statistical analysis as supported in paragraphs 108, 128, 132, and 172 of the specification. For this reason, Applicants respectfully submit that the inventions described in these claims are not “independent” as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I and IV. In such a situation, it would not be overly burdensome on the Examiner to check for both of these alleged “separate” inventions at the same time.

For at least the foregoing reasons, Applicants respectfully traverse the restriction requirement and respectfully request the Examiner to examine the claims of Groups I and IV together. Applicants respectfully submit that claims of Groups I and IV are in proper condition for allowance, and respectfully request that the Examiner pass this case to issuance. Applicants expressly reserve the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application.

## **RESPONSE TO OFFICE ACTION REMARKS**

The Office Action alleges that “It is unclear whether the applicant’s embodiments actually obtain or [are] just adapted to acquire neuro-ocular wavefront data. The applicant’s disclosure and the drawings do not disclose the effects of the neurological pathways being taken into account and how the applicant’s embodiments interactively obtain the neuro-ocular wavefront data. It is unclear whether the neuro-ocular wavefront in the instant application can be differentiated from the prior art neuro-ocular wavefront data as the applicant referred to in the above mentioned US patent numbers [5,258,791, 600,800, and 6,099,125].” (Office Action, page 4).

**1. It is unclear whether the applicant’s embodiments actually obtain or [are] just adapted to acquire neuro-ocular wavefront data**

The disclosure relates to methods and apparatuses that take the neuro-ocular wavefront data (information), once it is obtained, and transforms it by correlating the information to confounding parameters (both subject dependent and procedure dependent) and into more useful information that can be applied to improve vision with corrective means such as glasses, contacts, and laser vision surgery.

One of the characteristics in the cited references is that use of the “raw” unmodified neuro-ocular wavefront data to make treatment decisions may not lead to optimal outcomes. Therefore, one of the objects of the present disclosure is to provide methods and means to convert the neuro-ocular wavefront data measurements into information that will provide superior clinical outcomes (better vision, happier patients) than the information provided by the cited references alone.

In the background of the specification, three suitable embodiments of refractometers that produce neuro-ocular wavefront data are disclosed.

2. **The applicant's disclosure and the drawings do not disclose the effects of the neurological pathways being taken into account and how the applicant's embodiments interactively obtain the neuro-ocular wavefront data**

The neurological pathways influence visual perception. The disclosure presents at least one method to compensate for their impact, and thereby provide improved visual outcomes. However, paragraph 7 of the specification states that:

While ocular aberrometers provide detailed information on the optical characteristics of the eye, these devices usually provide no information with reference to the neurological pathways between the eye and the brain and they are not capable of localizing the retinal plane preferred by the patient. In other words, the integrated visual pathway between the eye and the brain can introduce another transfer function, which is undetectable by ocular aberrometry

3. **It is unclear whether the neuro-ocular wavefront in the instant application can be differentiated from the prior art neuro-ocular wavefront data as the applicant referred to in the above mentioned US patent numbers**

The neuro-ocular wavefront data described in our previous patents is the same neuro-ocular wavefront data described as the input data for the methods and apparatus of the current application. The current specification discloses how and what to do with the neuro-ocular wavefront data once it is obtained.


### **CONCLUSION**

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this response. We hereby authorize any deficiencies or additional fees that may be required to be charged to our Deposit Account No. 20-0778.

Respectfully Submitted,

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& RISLEY, L.L.P.**

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